

AN ORDINANCE approving Contract 6280-92, 1992 NEIGHBORHOOD COMMERCIAL CAPITAL IMPROVEMENTS-PKG. 92-C between DEHNER CONSTRUCTION CO., INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract 9280-92, 1992 NEIGHBORHOOD COMMERCIAL CAPITAL IMPROVEMENTS-PKG. 92-C by and between DEHNER CONSTRUCTION CO., INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

1. Resurfacing of the North-South alley between Calhoun and Harrison and Masterson and Williams (Automotive Hardware).
2. Replacement of the sidewalks on Hanna St. from the South right of way line of McKinnie Ave. to the North right of way line of Senate Ave. (Southside Corners).
3. Replacement of curbs, sidewalks, drive approaches and corner on Broadway from the south curb line of Grace Ave. to a point 125 ft.± south thereof and on Grace Ave. from the east curb line of Broadway east to the alley (Safeway Driving School);

involving a total cost of Eighteen Thousand Two Hundred Sixty-Seven and 25/100 Dollars (\$18,267.25).

SECTION 2. Prior Approval has been requested from Common Council on SEPTEMBER 22, 1992. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Sam Talarico  
Council Member

APPROVED AS TO FORM  
AND LEGALITY

J. Timothy McCaulay  
J. Timothy McCaulay, City Attorney

BID TAB

DATE: 9-9-92

BIDDER:

BIDDER:

BIDDER:

PROJECT: 1992 NCCI PACKAGE 92-C

RES. NO: 6280-92

DEHNER CONST.

MERBY CONST.

BROOKS CONST.

ITEM NO.	ITEM	QUANTITY	UNIT	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)
1.	Curb Removal	260	LF	3.00	780.00	1.80	468.00	2.50	650.00	3.00	780.00
2.	Concrete Removal	507	SY	3.50	1774.50	3.25	1647.75	3.50	1774.50	3.50	1774.50
3.	New Curb Type III	260	LF	10.00	2600.00	8.50	2210.00	12.00	3120.00	14.00	3640.00
4.	Concrete Sidewalk (4")	355	SY	20.00	7100.00	17.50	6212.50	20.00	7100.00	24.00	8520.00
5.	Conc. Pavement for Private Dr. (6")	22	SY	24.00	528.00	20.50	451.00	22.50	495.00	32.00	704.00
6.	Conc. Pavement for Commercial Dr. (8")	57	SY	25.00	1425.00	23.50	1339.50	24.50	1396.50	34.00	1938.00
7.	Plain Conc. Pavement (9") (Recessed 2")	3	SY	30.00	90.00	28.00	84.00	38.00	114.00	60.00	180.00
8.	Concrete Wingwalk & Ramps	20	SY	24.00	480.00	20.50	410.00	22.50	450.00	34.00	680.00
9.	Top Soil	45	TON	10.00	450.00	10.00	450.00	10.00	450.00	14.00	630.00
10.	Fine Grade, Seed, Mulch	270	SY	2.00	540.00	0.75	202.50	0.90	243.00	0.43	116.10
11.	Adjust M.H. to Grade	1	EA	250.00	250.00	100.00	100.00	250.00	250.00	155.00	155.00
12.	New Catch Basin Type "I-C"	1	EA	1500.00	1500.00	1475.00	1475.00	2100.00	2100.00	2000.00	2000.00
13.	MAC 5D Base	17	TON	27.00	459.00	37.00	629.00	30.00	510.00	27.00	459.00
14.	MAC #11 Binder	27	TON	28.00	756.00	44.00	1188.00	36.00	972.00	32.00	864.00
15.	MAC B Surface	29	TON	32.00	896.00	50.00	1400.00	42.00	1176.00	38.00	1064.00
				TOTAL: \$19,628.50		TOTAL: \$18,267.25		TOTAL: \$20,801.00		TOTAL: \$23,504.60	
				% over		0.00%		% over		5.97%	
				% under		6.94%		% under		0.00%	



CONTRACT NO. 6280-92

1992 NEIGHBORHOOD COMMERCIAL CAPITAL IMPROVEMENTS-PKG.92-C  
(CDBG)

BOARD ORDER NO. 48-92

WORK ORDER NO. 11,003

THIS CONTRACT made and entered into in triplicate this 30 day of SEPTEMBER, 1992, by and between DEHNER CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

**ARTICLE 1: SCOPE OF WORK**

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following improvement:

1. RESURFACING OF THE NORTH-SOUTH ALLEY BETWEEN CALHOUN AND HARRISON AND MASTERSON AND WILLIAMS (AUTOMOTIVE HARDWARE).
2. REPLACEMENT OF THE SIDEWALKS ON HANNA ST. FROM THE SOUTH RIGHT OF WAY LINE OF MCKINNIE AVE. TO THE NORTH RIGHT OF WAY LINE OF SENATE AVE. (SOUTHSIDE CORNERS).
3. REPLACEMENT OF CURBS, SIDEWALKS, DRIVE APPROACHES AND CORNER ON BROADWAY FROM THE SOUTH CURB LINE OF GRACE AVE. TO A POINT 125 FT. + SOUTH THERE OF AND ON GRACE AVE. FROM THE EAST CURB LINE OF BROADWAY EAST TO THE ALLEY (SAFEWAY DRIVING SCHOOL).

all according to Res. No. 6280-92 and do everything required by this contract and the other documents constituting a part hereof.

**ARTICLE 2: THE CONTRACT SUM**

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$18,267.25. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

**ARTICLE 3: PROGRESS PAYMENTS**

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety percent (90%) of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works, which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award or any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

#### **ARTICLE 7: PREVAILING WAGE SCALE**

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

#### **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Resolution No. 6280-92.
- b. Instructions to Bidders for Resolution No. 6280-92.
- c. Contractor's Proposal Dated 9/9/92.
- d. Ft. Wayne Street Engineering Drawings accompanying bid packet for Resolution No. 6280-92.
- e. Supplemental Specifications accompanying bid packet for Resolution No. 6280-92.
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Federal Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Right-of-Way Cut Permit.
- l. Comprehensive Liability Insurance Coverage.
- m. Minority/Female Employment Hourly Utilization
- n. MBE Commitment Form

#### **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

#### **ARTICLE 10: INDEMNITY**

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

## **ARTICLE II: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

## **ARTICLE 12:**

The CONTRACTOR agrees to complete the work specified in the contract by 10/31/92 after having been ordered by the OWNER to commence work under this contract.

## **ARTICLE 13: COUNCILMANIC APPROVAL**

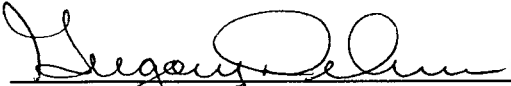
This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

## **ARTICLE 14:**

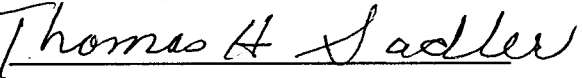
This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

BY: 

Gregory Dehner  
President

BY: 

Thomas H. Sadler  
Secretary


CITY OF FORT WAYNE, INDIANA

BY: \_\_\_\_\_  
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS



Charles E. Layton  
Director of Public Works



C. James Owen  
Member



Katherine A. Carrier  
Member

ATTEST:



Patricia J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 21st day of September, 1992, personally appeared the within named Gregory Dehner & Thomas H. Sadler, who, being by me first duly sworn upon their oaths, say that they are the President and Secretary of Dehner Construction, Inc. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Dehner Construction, Inc. for the uses and purposes therein set forth.

  
NOTARY PUBLIC

Roger N. Carpenter  
(Type or print name of notary)

MY COMMISSION EXPIRES: January 13, 1996



## ACKNOWLEDGEMENT

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )

BEFORE ME, a Notary Public, in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, C. James Owen and Katherine A. Carrier, members of the Board of Public Works, City of Fort Wayne, Indiana; and Patricia J. Crick, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

NOTARY PUBLIC

Type or Print Name of Notary

My Commission Expires: \_\_\_\_\_

Approved by the Common Council of the City of Fort Wayne on  
day of \_\_\_\_\_, 19\_\_\_\_.

Special Ordinance No. \_\_\_\_\_.

**MBE/WBE RIDER**  
**FOR FEDERALLY-FUNDED PROJECTS THROUGH THE CITY OF FORT WAYNE**

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and \_\_\_\_\_ **DEHNER CONSTRUCTION CO., INC.**, hereinafter referred to as "Contractor", WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the 1992 NEIGHBORHOOD COMMERCIAL CAPITAL IMPROVEMENTS-PKG. 92-C, which project was bid under Resolution Number 6280-92; and

WHEREAS, Contractor agrees that the goal for qualified Minority-owned Business Enterprises or Women-owned Business Enterprises, hereinafter sometimes referred to as "MBE/WBE's" as subcontractors on this project is 10% of the contract amount;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. MBE/WBE Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this MBE/WBE Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this MBE/WBE Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this MBE/WBE Rider

will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the MBE/WBE goal stipulated in this MBE/WBE Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this MBE/WBE Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this MBE/WBE Rider.

3. Request For Waiver: If at the time final payment application is made, contractor has not attained the 10 % MBE/WBE goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % MBE/WBE goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se: In any case, a Contractor shall be deemed to have made good faith efforts at compliance where MBE/WBE's have been subcontracted for every sub-contract for which there are qualified MBE/WBE's available.

6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne MBE/WBE Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

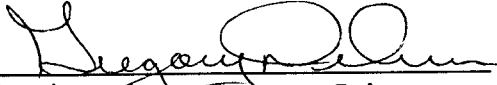
MBE/WBE Rider

Page 3

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this MBE/WBE Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this MBE/WBE Rider this 30 day of SEPTEMBER, 1992.

By:

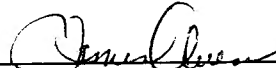
  
Contractor Gregory Dehner  
President

By:

Board of Public Works

  
Charles E. Layton

  
Katherine Carrier

  
C. James Owen

ATTEST:

  
Patricia J. Crick, Clerk

Read the first time in full and on motion by Talarico, seconded by \_\_\_\_\_, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_, day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 10-12-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by \_\_\_\_\_, and duly adopted, placed on its passage. PASSED ~~LAST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>8</u>			<u>1</u>
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG				<u>✓</u>
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 10-27-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
*Margie E. Schaff, Deputy Clerk*

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING)~~ ORDINANCE ~~RESOLUTION~~ NO. 1-182-92 on the 27th day of October, 1992

ATTEST:

(SEAL)

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
*Margie E. Schaff, Deputy Clerk*

Thomas P. Henry  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of October, 1992, at the hour of 2:00 o'clock PM, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
*Margie E. Schaff, Deputy Clerk*  
Approved and signed by me this 22 day of November, 1992, at the hour of 9:15 o'clock AM, M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



Admn. Appr.

TITLE OF ORDINANCE: Contract 6280-92, 1992 Neighborhood Commercial Capital Improvements-Pkg. 92-C

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract 6280-92, 1992 Neighborhood Commercial Capital Improvements-Pkg. 92-C is for the following: 1. Resurfacing of the North-South alley between Calhoun and Harrison and Masterson and Williams (Automotive Hardware). 2. Replacement of the sidewalks on Hanna St. from the South right of way line of McKinnie Ave. to the North right of way line of Senate Ave. (Southside corners). 3. Replacement of curbs, sidewalks, drive approaches and corner on Broadway from the south curb line of Grace Ave. to a point 125 ft.  $\pm$  south thereof and on Grace Ave. from the east curb line of Broadway east to the alley (Safeway Driving School). Dehner Construction Co., Inc., is the contractor. PRIOR APPROVAL RECEIVED ON 9/22/92.

EFFECT OF PASSAGE: Improvements as listed above.

EFFECT OF NON PASSAGE:

D-92-10-17

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$18,267.25 (CDBG)

ASSIGNED TO COMMITTEE:

BILL NO. S-92-10-17

REPORT OF THE COMMITTEE ON  
PUBLIC WORKS

SAMUEL J. TALARICO, CHAIR  
ARCHIE L. LUNSEY, VICE CHAIR  
BRADBURY, LONG

WE, YOUR COMMITTEE ON \_\_\_\_\_ PUBLIC WORKS \_\_\_\_\_ TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract  
6280-92, 1992 NEIGHBORHOOD COMMERCIAL CAPITAL IMPROVEMENTS-PKG.  
92-C between DEHNER CONSTRUCTION CO., INC. and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~) \_\_\_\_\_

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*Sam Talarico*  
*Archie Lunsey*  
*Bradbury*

_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____

DATED: 10-27-92

Sandra E. Kennedy  
City Clerk